

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODNEY DAVISON,

Plaintiff,

Case No. 06-12755

vs.

DISTRICT JUDGE AVERN COHN
MAGISTRATE JUDGE STEVEN D. PEPE

C/O MACLEAN, C/O FRANTZ, C/O HERBERT,
SERGEANT D. WILLIAMS, DEPUTY CARBERRY,
DEPUTY SCOTT, WARDEN WOLFENBARGER,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY MICHIGAN DEPARTMENT OF
ATTORNEY GENERAL (DKT. # 18)**

On February 3, 2005, Plaintiff filed a civil rights claim against C/O Maclean, C/O Frantz, C/O Herbert, Sergeant D. Williams, Deputy Carberry, Deputy Scott, and Warden Wolfbarger, which was dismissed for failure to exhaust (Case No. 05-70287). On June 22, 2006, Plaintiff filed the present lawsuit alleging the same facts. On November 6, 2006, Plaintiff filed his motion seeking to disqualify the Michigan Attorney General's office from representing the defendants on the basis of MDOC Policy 02.01.102.

Plaintiff alleges that Policy 02.01.102 requires that the Attorney General's office not be employed to represent any MDOC employees who have violated MDOC policies and/or prisoners' civil rights. Yet, a review of the current policy, effective June 6, 2005, indicates that the policy is permissive and specifically states that the "Director or designee has the final authority as to whether a request for Department of Attorney General representation will be approved." MDOC Policy

02.01.102(G).¹ The policy does indicate that “[i]f it is subsequently determined that the employee or ex-employee was not acting in the course of employment or there was not a reasonable basis to believe the conduct was within the scope of his/her authority, the Director may request that representation be withdrawn”. Yet, this is also permissive and the policy does provide standing for a opposing party to challenge the assignment of the Attorney General’s office.

Therefore, Plaintiff’s motion is DENIED.

SO ORDERED.

Dated: January 10, 2007
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that on January 10, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Diane Smith, and I further certify that I mailed by United States Postal Service the paper to the following non-ECF participant: Rodney Davison, #213112, 18770 E. Watertower, Kincheloe, MI 49755

s/ James P. Peltier
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¹ http://www.michigan.gov/documents/corrections/02_01_102_180532_7.pdf.